

CONSERVATION EASEMENT APPRAISAL ISSUES

ARIZONA TAX CONFERENCE 2017

CONSERVATION EASEMENT

WHAT IS IT?

- A legal agreement between a landowner and a qualified organization that restricts future activities on the land to protect its conservation values ⁽¹⁾
- 1. *The Conservation Easement Handbook, 2nd ed, Washington DC: Land Trust Alliance, 2005*

- Uniform Conservation Easement Act 1981 Amended 2007
- (1) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

- (2) "Holder" means:
- (i) a governmental body empowered to hold an interest in real property
- under the laws of this State or the United States; or
- (ii) a charitable corporation, charitable association, or charitable trust, the
- purposes or powers of which include retaining or protecting the natural, scenic, or open-space
- values of real property, assuring the availability of real property for agricultural, forest,
- recreational, or open-space use, protecting natural resources, maintaining or enhancing air or
- water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

- (3) "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.
- Arizona's conservation law is based on the 1981 Act

Conservation Easement: AI Definition; 5th Ed.

- An interest in real property restricting future land use to preservation, conservation, wildlife habitat, or some combination of those uses.
- A conservation easement may permit farming, timber harvesting or other uses of a rural nature to continue, subject to the easement.

AI Definition cont.

- In some locations a conservation easement may be referred to as a *conservation restriction*
- *The Dictionary of Real Estate Appraisal, 5th Ed. Appraisal institute, 2010*

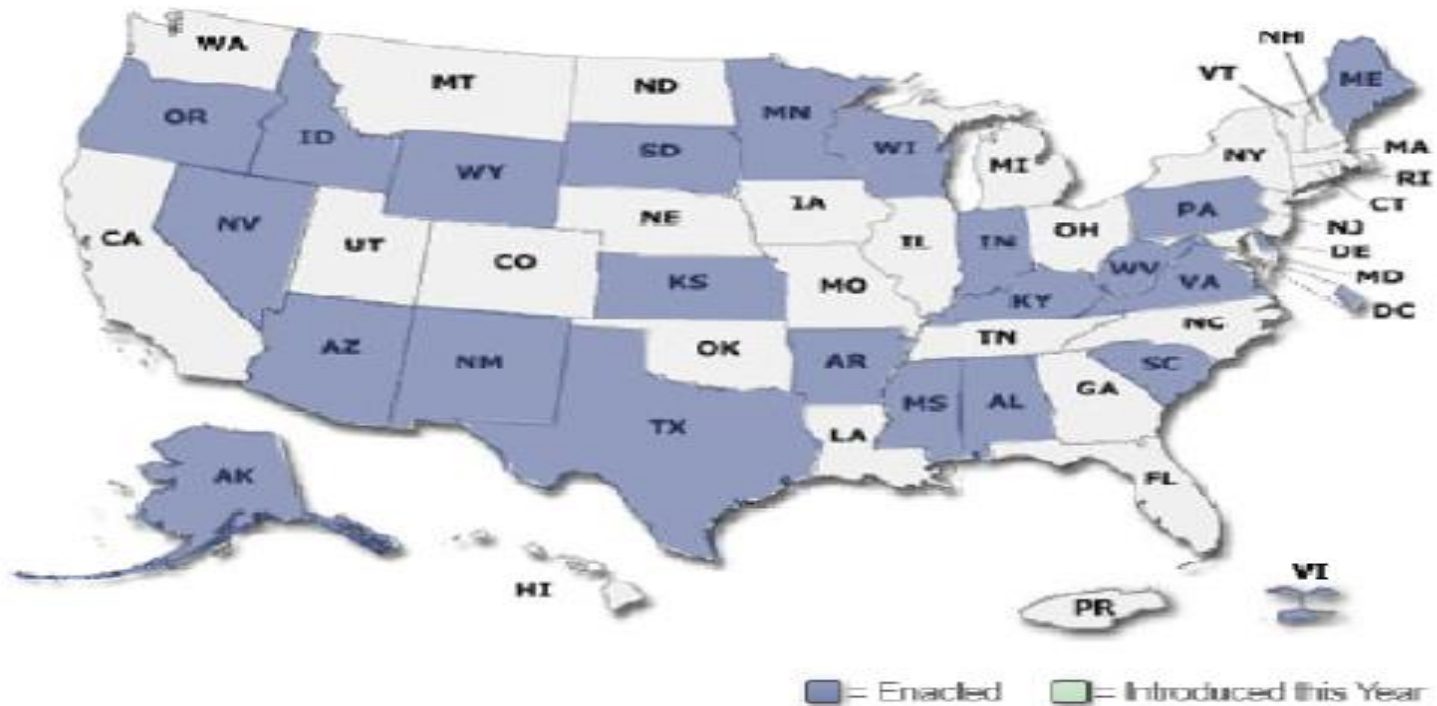
CONSERVATION VS. TYPICAL EASEMENTS

- A conservation easement is a voluntary transfer of specific rights given by the owner.
- It limits what can be done with the property.
- As compared to a typical easement that is the right of a non-owner to use the property owner's property or a portion thereof.
- A typical easement often includes rights to access for non-owners to a property.

- A conservation easement does not give use or access rights to another, it limits uses for the property
- A conservation/preservation easement **MUST** conserve or preserve something.
- Requires rights be given to “qualified” holders.

STATES WITH CONSERVATION LAWS

Legislative Enactment Status
Conservation Easement Act



602,916 ACRES in AZ

- **Easements per county**

- Note: The data refers to the primary county of each easement based on the area of its sites.

- **Number of easements**

• County	# of Easements	Acres	
• Apache County	1	130	
• Cochise County	31	71,617	
• Coconino County	4	2,199	
• Gila County	0 --		
• Graham County	1	2,283	
• Greenlee County	1	283	
• La Paz County	0	--	
• Maricopa County	2	2,149	
• Mohave County	3	68	
• Navajo County	0	--	
• Pima County	49	7,284	
• Pinal County	4	443	
• Santa Cruz County		11	26,238
• Yavapai County	5	6,825	
• Yuma County	1	5	

AZ CONSERVATION LAW

- Arizona Revised Statutes includes laws regarding conservation easements
- Title 33 Chapter 2 Article 4
- This Article sets out what a conservation easement is, how it is created, and what it is not.
- Based on the Uniform Conservation Easement Act of 1981

Uniform Conservation Easement Act

A.R.S. 33-271

- 33-271. Definitions
- In this article, unless the context otherwise requires:
- 1. "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations for conservation purposes or to preserve the historical, architectural, archaeological or cultural aspects of real property.
- 2. "Conservation purposes" means any of the following activities which yield a significant public benefit:
- (a) Preserving land areas for outdoor recreation by, or the education of, the general public.
- (b) Protecting a relatively natural habitat of fish, wildlife or plants or similar ecosystem.
- (c) Preserving open space, including farmland and forest land, if the preservation is either:
- (i) For the scenic enjoyment of the general public.
- (ii) Pursuant to a clearly delineated federal, state or local governmental conservation policy.
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- 3. "Holder" means either:
 - (a) A governmental body empowered to hold an interest in real property under the laws of this state or the United States.
 - (b) A charitable corporation or trustee of a charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality or preserving the historical, architectural, archaeological or cultural aspects of real property.
- 4. "Third party right of enforcement" means a right granted in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation or charitable trust, which, although eligible to be a holder, is not a holder.

RECENT STATUTE CHANGES IN AZ

- There have been some recent changes to the ARS regarding Conservation/Preservation easements
- Senate Bill 1432 from the 2016 session Amended Title 42, Chapter 12, Article 2.
- Section 41-12058 was added requiring a registry of conservation easements
- Section 42-15002 was amended regarding Class 2 property – now 3 categories

AZ DOR CONSERVATION EASEMENT VALUATION GUIDELINE

- Restricted use impacts the fee simple value.
- It may be on only a portion of a larger parcel
- Can be negative or positive impact, or offsetting
- Each easement is different with varied restrictions or rights given up.

Conservation Easements and Ownership Rights

- Real property ownership involves numerous rights (bundle of rights)
- Rights of Ownership are what create value
- Not all individual rights are equivalent in value

- For assessment the only concern is with the value after the easement is put into effect.
What is it now?
- The Assessor does not value the easement, only the underlying rights left on the property
- The easement MUST conserve/preserve something. It may have no effect on value.

- Most conservation/preservation appraisals are looking for the value of the easement
- Assessment in AZ is looking for the value of the property burdened by the easement

Valuation Techniques

- Highest and Best Use and Current Use considerations
- H&BU potential problems
- Before and after method
 - Involves two separate values
 - Value **Before** Encumbrance
 - Value **After** Encumbrance
 - This method values the easement

- Assessment is only concerned with the after valuation on conservation/preservation
- The easement documentation needs to be reviewed to determine what rights remain on the assessed property
- The value of the easement, or part given, is the finding of the typical easement appraisal. Not needed for assessment purposes.

- Comparable Sales must have similar characteristics and similar restrictions on use.
- Best sales will have same/similar easement restrictions but can be difficult to find
- Sales with similar restrictions that are not easements can be used, ie in a flood zone